

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MM Docket No. 92-253

In re Applications of)

BAKCOR BROADCASTING, INC., Debtor)
c/o DENNIS ELAM, TRUSTEE)

For Renewal of License of)
Station KLIK(FM), Lubbock, Texas)

SOUTHWEST EDUCATIONAL MEDIA)
FOUNDATION OF TEXAS, INC.)

For Construction Permit for a new FM)
Station on Channel 229C1, Lubbock, TX)

To: Administrative Law Judge Walter C. Miller

File No. BRH-900330VV

File No. BPED-900629MK

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR LEAVE TO AMEND

Southwest Educational Media Foundation of Texas, Inc., by its counsel, hereby petitions for leave to amend its application in the above-captioned proceeding. In support whereof the following is stated:

1. The attached amendment reports the resignation of T. Kent Atkins as an officer and director of SEMFOT. This material was previously submitted with an amendment filed on November 27, 1992. However, that amendment was rejected by the Presiding Judge as redundant. Memorandum Opinion and Order, FCC 92M-1068, released December 3, 1992. The portion of the amendment which relates back to the November 12, 1992 petition for leave to amend has been eliminated so as to remove the redundancy. (Undersigned counsel has stricken the references in the amendment to Lubbock Educational Broadcasting, Inc.) The November 12 amendment dealt solely with substitution of Lubbock Educational Broadcasting

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Inc. for SEMFOT. The amendment, as revised, has nothing to do with Lubbock Educational Broadcasting, Inc. whatsoever. Therefore, it is believed that the amendment, as revised, is not redundant. (Undersigned counsel apologizes for having submitted a pleading which the Presiding Judge has determined to be redundant).

2. The amendment is required by Section 1.65 of the Commission's Rules so as to accurately reflect the status of the applicant. The applicant does not seek nor will it obtain any comparative advantage from the information provided by the amendment.

3. In addition, the amendment meets the normal "good cause" criterion developed by case law which include the following:

- 1) The applicant acted with due diligence in filing the petition to amend;
- 2) acceptance of the proposed amendment will not necessitate a change in issues, or the addition of new issues or parties;
- 3) the proposed amendment is not required as a result of a voluntary act of the applicant;
- 4) other parties will not be unfairly prejudiced by the acceptance of the amendment; and
- 5) the proposed applicant will not gain a comparative advantage through acceptance of the proposed amendment.

See Sands Broadcasting Corp., 22 R.R. 106, 110 (H.E. 1961). Accord, Radio Ridgefield, Inc., 47 F.C.C. 2d 402 (Rev. Bd. 1974), Click Broadcasting Co., 25 F.C.C. 2d 511 (Rev. Bd. 1970), Erwin O'Connor Broadcasting Co., 22 F.C.C. 2d 140 (Rev. Bd. 1970),

Ultravision Broadcasting Co., 11 F.C.C. 2d 394 (Rev. Bd. 1968).

4. The applicant has acted with due diligence in submitting the amendment. The applicant attempted to file the amendment within 30 days following release of the Hearing Designation Order. The resignation of Mr. Atkins was reported within five days of the tender of his resignation from SEMFOT. The amendment is being refiled by Priority mail, with redundant material expunged, the same day that counsel received the Presiding Judge's order rejecting the amendment because it included redundant material involving a proposal to substitute a new applicant.

5. Acceptance of the amendment will not necessitate the modification or addition of issues or parties. The resignation of Mr. Atkins may in fact eliminate issues since, as reported in F.N. 1 of the HDO, various allegations have been made regarding Mr. Atkins' qualifications to be a Commission licensee. Although Elam argued in its OPPOSITION TO PETITION FOR LEAVE TO AMEND, filed November 20, 1992, that Atkins' qualifications remain at issue even if he removes himself from the application, his removal certainly would not require additional issues.

6. The proposed amendment is not required as a result of a voluntary act of the applicant. The resignation of Mr. Atkins is not a voluntary act of the applicant. It is a voluntary act of Mr. Atkins. However, the applicant here is a corporation, consisting of 3 persons. They have no control over the resignation of Mr. Atkins other than to report it.

7. The other parties will not be prejudiced by the acceptance of the amendment. In his OPPOSITION TO PETITION FOR LEAVE TO AMEND, filed November 20, 1992, opposing the amendment which

sought to substitute applicants, Elam argued that he would be prejudiced because the proposed amendment would disrupt the proceeding since Elam would not know "which entity is the real applicant and which persons are the real principals." This argument is unavailing regarding this new amendment which simply reports the resignation of Mr. Atkins. There will be no additional parties as a result of this amendment and thus no additional burden on Elam whatsoever.

8. The applicant does not seek nor will it obtain any comparative advantage from the information provided by the amendment. While Elam argues that the elimination of Mr. Atkins would result in a comparative advantage to SEMFOT, such is certainly not the case. Indeed, SEMFOT hereby stipulates that it will not seek any comparative advantage as a result of the removal of Mr. Atkins. To the extent that Elam intends to argue (para. 5 of its opposition) that SEMFOT may have past broadcast record which bears adversely on its comparative qualifications, the removal of Atkins will in no way diminish the record on that score and SEMFOT hereby so stipulates that it will not seek to avoid scrutiny of its broadcast record as a result of the resignation of Mr. Atkins.

9. Elam also argues (para. 6-7) that "SEMFOT cannot be permitted to amend out of its problems," referencing Mr. Atkins' character qualifications. Assuming *arguendo* that Elam is correct on this point, that has no bearing on acceptance of the instant amendment. That argument goes to questions which presumably must be raised in a motion to enlarge issues. There is no character issue before the Presiding Judge at this time and no such issue

has ever been designated against SEMFOT or Atkins. The mere fact that allegations have been made in regard to Mr. Atkins is no basis for denying him the privilege of withdrawing from SEMFOT.

10. Finally, it is noted that Elam contends (para. 1 of opposition pleading) that Atkins is the "moving force behind the application" and thus should not be permitted to resign. While Mr. Atkins may have been the instrument who was initially responsible for the filing of this noncommercial application, he ceased to be the "moving force behind the application" when over 1,000 citizens of Lubbock marched to the KAMY studios and donated some \$75,000.00 toward the purchase of this facility from the bankrupt estate. Recognizing his fiduciary duty to those citizens of Lubbock who have paid their hard-earned money to have this radio station serve them, Mr. Atkins, on advice of undersigned counsel (who is serving *pro bono* in this matter on behalf of the citizens of Lubbock), has agreed to step down as a principal of this application. When Mr. Elam entered into a contract with a non-profit corporation to sell this station to that corporation and when that corporation raised public money based on the contract with Elam, this application became an application of the citizens of Lubbock of which the principals are merely "trustees" in the purest sense of that term.

11. Whether or not the citizens of Lubbock must suffer due to the alleged wrongdoing of Atkins is a matter which the Presiding Judge may ultimately have to decide in this proceeding. However, undersigned would respectfully contend that the "public interest" here is clearly in favor of the citizens of Lubbock who have donated their funds to see this radio station serve them and

acceptance of the proffered amendment would serve the public interest.

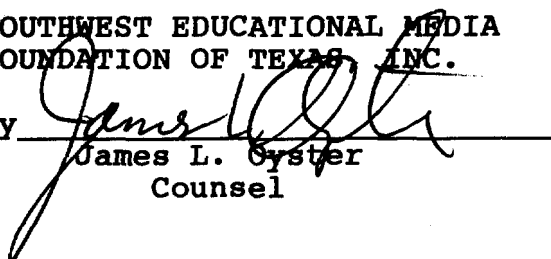
WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the attached amendment be accepted for filing.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
Rt. 1, Box 203A
Castleton, VA 22716
(703) 937-4800

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

By


James L. Oyster
Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing PETITION FOR LEAVE TO AMEND by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 7th day of December, 1992, to the following:

The Honorable Walter C. Miller
Administrative Law Judge
Federal Communications Commission
2000 L St., N.W., Room 213
Washington, D.C. 20554

Paulette Laden, Esq.
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Linda J. Eckard, Esq.
Roberts & Eckard
1919 Pennsylvania Ave., N.W., Suite 222
Washington, D.C. 20006
Counsel for Dennis Elam

Chief, Data Management Staff
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 350
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AMENDMENT

The application of Southwest Educational Media Foundation of Texas, Inc (SEMFOT) for a construction permit for a new FM broadcast station at Lubbock, TX (BPED-900629MK) is hereby amended to report the resignation of T. Kent Atkins as an officer and director of the corporation, effective January 1, 1993. No other change in the officers and directors of the corporation is anticipated. ~~The application is also amended in accordance with the attached material relating to Lubbock Educational Broadcasting, Inc.~~

9201/12/7/92

Respectfully submitted,

SOUTHWEST EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

Date:

Nov. 23, 1992

T. Kent Atkins
T. Kent Atkins

T. Kent Atkins
2921 Brown Trail
Suite 140
Bedford, TX 76021
(817) 498-7001

November 23, 1992

To: The Board of Directors of
Southwest Educational Media
Foundation of Texas, Inc.

I hereby tender my resignation as an officer and director of Southwest Educational Media foundation of Texas, Inc., effective January 1, 1993.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Kent Atkins", with a stylized flourish at the end.

T. Kent Atkins, President